

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS O’CONNOR,)	CASE NO. 5:05-CV-60239
)	
Plaintiff,)	JUDGE JOHN CORBETT O’MEARA
)	
v.)	
)	
ELECTRONIC DATA SYSTEMS)	
CORPORATION, a Delaware corporation,)	
)	
Defendant.)	

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS COUNT TWO
OF PLAINTIFF’S COMPLAINT PURSUANT TO RULE 12(b)(6) AND
DENYING IN PART PLAINTIFF’S MOTION FOR JURY TRIAL

THIS MATTER came before the Court on the motion of defendant Electronic Data Systems Corporation to dismiss Count II of plaintiff’s Verified Complaint and on the motion of plaintiff Thomas O’Connor for a jury trial. After carefully considering the parties’ briefing of the issues, and after hearing oral argument by the parties, the Court finds as follows:

In Count II of his Verified Complaint, plaintiff asserts a common law claim for wrongful discharge in violation of Michigan public policy, which is premised on the same allegations that plaintiff sets forth in support of Count I, plaintiff’s claim for retaliatory discharge under the whistleblower provision of Sarbanes-Oxley, 18 U.S.C. § 1514A (“SOXA”). Because SOXA provides the exclusive remedy for plaintiff’s allegations, Count II fails to state a claim upon which relief may be granted. As to plaintiff’s motion for a jury trial, the Court does not find that defendant would be prejudiced by plaintiff’s delayed jury demand and would permit a jury pursuant to FRCP 39(b); however, the Court also finds that plaintiff has neither a statutory nor a Constitutional right to a jury trial of his SOXA claim. But the Court will impanel an advisory jury.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

Defendant's Motion to Dismiss Count II of Plaintiff's Verified Complaint is GRANTED and Plaintiff's Motion for Jury Trial is GRANTED IN PART and DENIED IN PART.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: February 3, 2006